S.B.CRIMINAL MISC. PETITION NO.1664/2006
(Bhim Singh Vs. State of Raj.)

Date of order : : 29.03.2007

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

Mr.Shambhoo Singh, for the petitioner.
Mr.Ashok Upadhyay, PP for the State.

Heard the learned counsel for the parties.

The learned counsel for the petitioner states that the petitioner filed an application under Section 457 Cr.P.C. for release of 129 sacks of original plastic granule and 260 sacks of broken plastic. Another application was filed by Jethmal and Raju claiming 130 bags of plastic granules.

The learned Magistrate vide order dtd.12.10.2006 rejected both the applications. Against the order dtd.12.10.2006, the petitioner as well as Jethmal and Raju filed separate revision petition.

The learned Revisional Court vide order dtd.24.11.2006 allowed the revision petition filed by the petitioner and directed release of goods in question in favour of the petitioner provided he

furnishs bank guarantee of Rs.24,00,000/- and supurdginama and security of the same amount. By the same order, the revision petition filed by Jethmal and Raju was dismissed.

Against the order dtd.24.11.2006, the petitioner has filed the present misc. petition alleging that the imposition of condition of bank guarantee is onerous and therefore, this condition be deleted. The learned Counsel for the petitioner states that at the time of deciding the revision petition, the investigation was pending and now the police has filed challan against Jethmal and Raju and therefore, now in the changes circumstances, the condition of Bank guarantee be deleted. In support of his contention, the learned counsel for the petitioner has relied on the judgment of this Court in the case of Rajendra Kumar V/s State of Rajasthan reported in 1996 Cr.L.R. (Raj.) 101 and Tasbeer Singh V/s State of Rajasthan reported in 2003 WLC (Raj.) UC 144. The learned counsel for the petitioner also states that the condition of bank guarantee was imposed that in case Jethmal and Raju are found to be owner of the goods in question they can be compensated, but Jethmal and Raju has not claimed entire goods in question, but has only claimed 130 sacks of plastic granules, therefore, imposition of bank guarantee for the entire goods is onerous.

At the time of deciding the revision petition, the police has not filed challan. Now the Police has filed challan against Jethmal and Raju, therefore, in these changed circumstances, the matter is remanded back to the learned revisional Court and the learned revisional Court shall decide the revision petition filed by the petition afresh on the point of imposition of bank guarantee in light of the observations made by this Court in the cases cited by the learned counsel for the petitioner before this Court as well as other relevant circumstance of filing of challan against Jethmal and Raju.

Record of the lower Court be sent back immediately.

(KRISHAN KUMAR ACHARYA), J.

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